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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1326/2006-SM[BR] Date 09/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

M/S PREM KHALSA IRON & STEEL ROLLING MILLS Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 898 /2008 –SM[BR] dated 9.4.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent
   M/S PREM KHALSA IRON & STEEL ROLLING MILLS
   GURU KI NAGRI, MANDI GOBINDGARH, PUNJAB
2. Adv. / Consult SHRI R.K. KAPOORADV.
   M/S RESPONDENT;---------------

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH NEW DELHI

Excise Appeal No.1326 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.116/CE/CHD/06 dated 20.02.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:9.4.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

NA

CCE, Chandigarh ...Appellants
[Rep. by Shri S.L. Meena, DR]

Vs.

M/s. Prem Khalsa Iron & Steel Rolling Mills ...Respondent
[Rep. by Shri R.K. Kapoor, Advocate]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 898/08-SM(BR)/Dated:9.4.2008

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby penalty of equal amount of duty imposed under Rule 13 of the Cenvat Credit Rules, 2002 was set aside.

2. Ld. DR on behalf of the Revenue submits that the Commissioner (Appeals) set aside the penalty as the Respondent deposited the duty before issue of the show cause notice following the Larger Bench decision of the Tribunal in the case of CCE Vs. Machino Montell (P) Ltd. – 2004 (62) RLT 709 (TB-LB). He submits that the decision of the Larger Bench of the Tribunal has been over-ruled by the Hon'ble Punjab & Haryana High Court. He further submits that there is an allegation of tempering and manipulation of statutory records intentionally and deliberately and, therefore, the penalty of equal amount of duty is justified.

3. Ld. Advocate on behalf of the Respondent submits that on 2.1.2004, the Central Excise Officers during stock verification detected shortage of raw materials and the Respondent debited the duty vide RG-23 Part-II Account Entry No.243 dated 31.1.2004 along with penalty of 25% of the duty to the tune of Rs.8,289/- vide PLA Entry No.15 dated 31.1.2004 as required under Section 11AC of the Central Excise Act, 1944. Therefore, the Commissioner (Appeals) rightly set aside the penalty following the decision of the Larger Bench of the Tribunal. He relied upon the decision of the Hon'ble Rajasthan High Court in the case of Union of India Vs. TPL Industries Ltd reported in 2007 (214) ELT 506 (Rajasthan).

4. After hearing both the sides and on perusal of the records, I find that the shortage of goods was detected on 2.1.2004 and the Respondent debited the duty of Rs.34,355/- along with penalty of 25% of duty on

31.1.2004 long before the issue of show cause notice. The Adjudicating Authority confirmed the demand of duty of Rs.34,355/- and appropriated the said amount as deposited by them and also imposed penalty of equal amount. Ld. Advocate fairly submits that the Respondent deposited the penalty of 25% of the duty amount before issue of the show cause notice, which fulfills the proviso to Section 11 AC of the Central Excise Act, 1944. I agree with the submission of the ld. Advocate that the Respondent deposited the entire amount of duty alongwith penalty of 25% of duty. So, the imposition of penalty of equal amount of duty by the Adjudicating Authority is not justified. Accordingly, the order of the Commissioner (Appeals) is modified to the extent that the Respondent already deposited the penalty of 25% of the duty amount and, therefore, the penalty is reduced to Rs.8,289/-. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 9.4.2008.

(P.K. Das)
Member (Judicial)

Ckp.